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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/607,313	06/28/2000	Brad Baker	30687-US	6871

5179 7590 01/30/2002

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/30/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/607,313

Applicant(s)
Baker

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Dec. 20, 2001.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 27 and 28 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 27 and 28 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) ☐ Other:

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1. Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the brochure on "Paint Pop" in view of Kera, and Gramlich.

The brochure discloses Paint Pop which comprises candy in the shape of a paint roller, a packet comprising candy powder and a paint tray. The candy powder is emptied into the paint tray and the candy is rolled in the paint tray for consumption. The candy has a non-edible handle portion and an edible portion attached to the handle.

The Paint Pop differs from the claimed product in that it is consisted of a tray and a roller, not a can and a paint brush as claimed. The tray of the Paint Pop does not have a lid.

Gramlich discloses a wet paint and roller storage unit in which the tray has a lid so that the painter does not have to transfer the paint back into the can when he/she stops. When the painter wants to resume painting, he/she will merely have to open the lid and resume painting. (See col. 3)

Kern discloses a roller tray with cover thereon for protecting material in the tray against drying out so that the cover may be hinged open for a painting shift and may be hinged closed on the tray between shifts to avoid drying out of the material in the tray. (See col.1 lines 55-61)

The claimed product only differs from the prior art product in the shape. Applicant is only moving from one conventional design shape to another conventional design shape. A paint tray, a paint can, a paint brush and a paint roller are all conventional shapes. To change from one conventional shape to another conventional shape would have been obvious to one skilled in the art. As to the inclusion of a lid, it would have been obvious for one to include a lid on the paint

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tray of the Paint Pop product in accordance with the teaching the prior art to Gramlich and Kern. Gramlick and Kern teach to include a lid on a paint tray so that the material in the tray will not dry out and that the painter does not have to transfer the paint back to the can when he/she temporarily stops painting. The Paint Pop is an adaption of a real inedible product into an edible product to provide novelty. Thus, it would have been obvious to one skilled in the art to also adopt the teaching of Gramlick and Kern to provide a parallel function to a painter. The lid will enable the consumer to protect the roller candy and the powder candy from drying out or spilling when the consumer wants to take a break from eating and he/she can simply open the lid when consumption is resumed. The lid will also protect the roller and powder packet from falling out before consumption.

On Dec. 19, 2001, applicant submitted a declaration by Mr. Brad Baker. The declaration states the claimed invention has enjoyed astounding commercial success and received the Professional Candy Buyer's Product of the Year Award. There is no evidence in the declaration to show commercial success. The single sale figure without any comparative data and other evidence is not found convincing in proving commercial success. The receiving of the award is not evidence of commercial success.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

January 25, 2002

Lien Tran
LIEN TRAN
PRIMARY EXAMINER

group 1700